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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/664,101 | 09/17/2003 | Beata Bartkowska | F3315(C) | 3698 |

201 7590 11/02/2005

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| EXAMINER |
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PEARSE, ADEPEJU OMOLOLA

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| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/664,101 | BARTKOWSKA ET AL. | |
| | Examiner | Art Unit | |
| | Adepeju Pearse | 1761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

1. Claims 6-12 are objected to because of the following informalities: The claims are dependent on claim 4, which is a product claim, not a process claim. For examining purposes it is assumed that the claims are dependent on claim 6. Appropriate correction is required.
2. Claims 6, 8, 12 and 14 are objected to because of the following informalities: It has been noted that the claims contain the phrase "if used". While not commonly utilized in U.S. Patent Practice, applicant is urged to use --optionally-- if it applies. For purposes of examination, the office will regard "if used" as optionally. Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
2. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blake (US Pat. No. 4,244,981) in view of Huang et al (US Pat. No. 6,511,694). With regard to claims 1-5, Blake discloses an aerated frozen dessert composition free of conventional emulsifiers with a pH between 2.5 and 5.5, comprising water, 1% to 15% of an edible fatty triglyceride oil, 7% to 45% of a sweetening agent (abstract), 0.1% to 40% by weight of fruit material such as fruit purees (col 8 lines 48-51), crude fiber of citrus vesicles containing 0.6% to 1.3% water-soluble pectin levels (col 8 lines 40-45) and having an overrun of about 50% to 150% (col 13 lines 33-34). Blake also discloses that the crude fiber of the citrus vesicles upon cooking converts part of the

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insoluble pectin to soluble pectin. It is obvious to expect that the fiber contains soluble and insoluble fiber. However, Blake failed to disclose having non-fat milk solids in the composition. Huang et al teach a stable soft frozen dessert with a non-fat milk solid concentration from about 5% to about 15% by weight. The non-fat milk solids decrease sensitivity to temperature fluctuations and increase stability of a frozen product (col 6 lines 19-26). It would have been obvious to one of ordinary skill in the art to modify Blake with Huang et al by incorporating non-fat milk solids in order to increase the stability of the frozen product. With regard to claims 6-8, 11-12, 14 and 17, Blake discloses a process for preparing an aerated frozen dessert comprising the steps of preparing a mix of the sweetener, acid, water, and juice vesicles (col 14 lines 52-57). The mixture is admixed with other optional ingredients and whipped; the resulting aerated mixture is then frozen to produce an aerated frozen product (col 15 lines 11-24). However, Blake failed to disclose the step of pasteurizing. Huang et al teaches a method of preparing soft frozen dessert such as ice cream by initially mixing together milk, sucrose, etc the mixture is pasteurized and then homogenized, the mixture is then cooled to less than 7°C and then finally frozen. Huang et al also teach that after cooling the mixture is aged, which involves holding the mixture for a period of time sufficient to produce the physical changes in protein structure and fat crystallization that result in a more consistent and more easily processed mixture (col 8 lines 51-67, col 9 lines 1-13, col 9 lines 39-58). It would have been obvious to one of ordinary skill in the art to modify Blake with Huang et al by incorporating the method steps taught by Huang et al in order to produce products that have sufficient stability to retain their desired organoleptic properties (col 9 lines 21-23). The methods of preparing frozen desserts are well known in the art. With regard to claim 7, bases such as sodium hydroxide, potassium hydroxide etc are well

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known for their art recognized function in adjusting pH. With regard to claims 9-10 and 15-16, Blake discloses adding edible acids such as citric acid for pH adjustment between 2.5 and 5.5 (abstract, col 7 lines 16-20). With regard to claim 13, Blake discloses a process in which the juice vesicles are first homogenized before being mixed with other ingredients (col 16 lines 15-20).

Conclusion

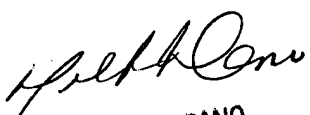
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peju Pearse
Art Unit 1761



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